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Ruling May Embolden Other States to Act

By ROBERT PEAR

WASHINGTON, May 19 — Today's Supreme Court decision allowing Maine to move ahead with a drug discount program is likely to embolden other states considering ways to make prescription drugs more affordable to their citizens, health policy experts and state officials said.

Outpatient prescription drugs account for 9 percent of Medicaid spending but have become a focus of state cost-control efforts because Medicaid spending on drugs has been rising at annual rates of 15 percent to 20 percent for several years.

Pamela S. Hyde, secretary of the New Mexico Human Services Department, said today that "a number of states will jump on the bandwagon" if the Maine program withstood further legal challenges by the pharmaceutical industry.

Richard Cauchi, a health policy specialist for the National Conference of State Legislatures, said that Hawaii adopted a law last year similar to the one that created the Maine program, Maine Rx.

In addition, Mr. Cauchi said, legislators in 18 states have offered bills this year to create drug discount programs similar to Maine's.

The states, he said, are Colorado, Florida, Georgia, Illinois, Indiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, Ohio, Rhode Island, Tennessee, Texas, Vermont and West Virginia.

Senator Olympia J. Snowe, Republican of Maine, called today's decision "a victory for consumers." Ms. Snowe said it would allow states to fulfill their potential as "laboratories of democracy."

Dozens of states, feeling the squeeze of soaring health costs and declining revenues, have cut Medicaid benefits or restricted eligibility in the past two years.

Over protests by the drug industry, states have also taken steps to rein in pharmaceutical costs by expanding the use of generic drugs, requiring drug manufacturers to pay additional rebates, and requiring doctors to get approval from a state agency before prescribing certain medicines.

In its decision today, giving qualified approval to Maine Rx, the Supreme Court accepted several arguments made by states in defending their cost-control measures.

The court, for example, was receptive to Maine's argument that some low-income people would be kept off the Medicaid rolls if they had access to discounted drugs. If members of this group cannot get prescription medicines, their conditions may worsen, "making it more likely that they will end up in the Medicaid program and require more expensive treatment," Justice John Paul Stevens said.

The court also appeared to accept the contention that "prior authorization" requirements could help save money for Medicaid without harming beneficiaries.

In challenging the Maine program, the drug industry said it was illegal because "it burdens Medicaid and Medicaid recipients for the express purpose of assisting the non-Medicaid population." Specifically, the industry said that the prior authorization requirement would make it much more difficult for Medicaid recipients to obtain some of the drugs they needed.

But Justice Stevens rejected that logic. For decades, he said, the court has given states "considerable latitude" in deciding how best to promote public health.

Maine's interest in protecting the health of its uninsured residents "provides a plainly permissible justification for a prior authorization requirement that is assumed to have only a minimal impact on Medicaid recipients' access to prescription drugs," Justice Stevens wrote.

Sara Rosenbaum, a professor of health law and policy at George Washington University, said: "The Supreme Court was unwilling to make a definitive ruling, because the case was in a preliminary posture. But the decision appears to be a huge win for state Medicaid programs.

"The court understood that Medicaid is part of the overall fabric of state health policy," Professor Rosenbaum added. "So a state can make choices about the shape of its Medicaid program even when those choices are intended to further the interests of uninsured people who are not covered by Medicaid."

Campbell Gardett, a spokesman for the federal Department of Health and Human Services, said the Supreme Court decision validated the position taken by the Bush administration that states should seek federal approval before using Medicaid as "the foundation for broader programs" like Maine Rx.

In ruling on such state proposals, Mr. Gardett said, the secretary of health and human services will weigh the benefits to the Medicaid program and the burdens that might be imposed on Medicaid recipients.

Marjorie Powell, a lawyer for Pharmaceutical Research and Manufacturers of America, the plaintiff in the Maine case, said that "states would have an easier time justifying such programs" if they adopted stricter eligibility rules, so drug discounts would be available only to people with modest incomes. Maine Rx is, in theory, open to any uninsured resident of the state, she said.